

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
FACEBOOK USER ID
<https://www.facebook.com/daniel.sands.908?fref=ts>
THAT IS STORED AT PREMISES CONTROLLED
BY FACEBOOK INC.

Case No. 3:15-MJ- 1073

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Tennessee Bureau of Investigation ("TBI") Special Agent Gregg McNamara, being
first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for
information associated with a certain Facebook user ID that is stored at premises owned,
maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking
company headquartered in Menlo Park, California. The information to be searched is described
in the following paragraphs and in Attachment A. This affidavit is made in support of an
application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to
require Facebook to disclose to the government records and other information in its possession,
pertaining to the subscriber or customer associated with the user ID.

2. I am a Special Agent with the TBI, and have been since May 2007. Your affiant
has worked in the field of law enforcement for over twelve years. I am a Special Agent with
the TBI assigned to conduct narcotics investigations in Upper East Tennessee, having been so
employed since May, 2007. Prior to that, I worked for the Tennessee Department of Revenue as
a Special Agent in their Criminal Investigations unit. I have received specialized training in

drug investigations and money laundering violations from the TBI, the Federal Law Enforcement Training Center, the two-week Basic Narcotics Investigators School sponsored by the Drug Enforcement Administration (“DEA”) and several other specialized narcotics investigative schools sponsored by other state, local, and federal agencies. During my employment, I have been involved in over 1,000 investigations involving the distribution of narcotics in Upper East Tennessee, which have led to prosecutions in both state and federal court. As a Special Agent with the TBI, I have acted in an undercover capacity to purchase narcotics from individuals trafficking in controlled substances in violation of the Drug Control Act of the State of Tennessee. I have executed search warrants, conducted wiretap intercept investigations, conducted surveillance of drug transactions, seized evidence, arrested suspects, interviewed suspects, and conferred with prosecutors and other law enforcement officers regarding money laundering and narcotics investigations in my community and, as a result, have gained considerable experience. Through experience and training, I am familiar with the habits, practices, and characteristics of people that deal in illegal narcotics. Through training, experience, and consultation with other law enforcement officers, I have learned that social networking sites are used to establish contact with individuals that have or will testify in court proceedings. Furthermore, I know that once contact is made with other individuals involved with testifying in court proceedings that future activities can be planned through the facilities provided by the social networking sites, including but not limited to, chat rooms, email messages, private one-to-one chats, instant messaging and gaming applications. I know that connections to social networking sites can be established through the use of a computer that has Internet capabilities as well as mobile devices, such as cellular phones, laptop computers, Ipad, Ipod, and ebook devices that have web browsing capabilities such as Nooks and Kindles.

Through experience and training I am aware that it is most common for people to access social media sites, including Facebook, using personal computers located at their residence or place of employment.

3. Based on my training and experience, I use the following technical terms to convey the following meanings:

- a. IP Address: The Internet Protocol address (or simply “IP address”) is a unique numeric address used by computers on the Internet. An IP address looks like a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet computer must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some computers have static--that is, long-term--IP addresses, while other computers have dynamic--that is, frequently changed--IP addresses.
- b. Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.
- c. Electronic Mail (“E-mail”): Individuals that utilize the Internet can communicate by using electronic mail (hereinafter referred to as “E-mail”). E-mail is an electronic form of communication, which can contain letter type correspondence and graphic images. E-mail is similar to conventional paper type mail in that it is

addressed from one individual to another and is usually private. E-mail usually contains a message header that gives information about the individual that originated a particular message or graphic, and importantly, the return address to respond to them.

- d. Internet Service Provider (“ISP”): Individuals that have an Internet E-mail address must have a subscription to, membership, or affiliation with, an organization or commercial service, which provides access to the Internet computer network. A provider of Internet access is referred to as an Internet Service Provider or ISP. The E-mail address is bisected by an “at” symbol “@”, where the information after the symbol indicates the identity of the ISP, and the information before the symbol indicates the identity of the particular user.
- e. Social Networking Services: Social networking services are online websites that allows users to create their own profile pages, which can include lists of their favorite musicians, books and movies, photos of themselves and friends, and links to pages within and outside the social networking environment. These services also permit users to send and receive private messages with other users, and to restrict the disclosure of certain information (blogs, profile information) exclusively to their list of friends. Some of the more common social networking websites include, but are not limited to Facebook, Google+, and Twitter.

4. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

5. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of 18 U.S.C. § 1513(b)(1) have been committed by Daniel Ray Sands ("D. Sands"). There is also probable cause to search the information described in Attachment A for evidence of these crimes, as described in Attachment B.

PROBABLE CAUSE

6. On November 17, 2005, David Walker testified for the United States in the federal criminal trial *United States of America v. Leonard Sands*, No. 3:14-CR-138. Following his testimony, on Tuesday November 17, 2015, at approximately 9:44 p.m., David Walker received the following Facebook Instant Message from the Facebook account of D. Sands, son of Leonard Sands: *"as good as my dad was to you I see how u pay him back. Ur a dick sucking fag I'll be sure to pay back the faver thanks u little bitch ass fucker. Daddy was good to u cu around"*.

7. On November 18, 2015, the Facebook account of D. Sands reposted a picture with the quote: "Don't be a snitch." On the following day, November 19, 2015, the Facebook account of D. Sands reposted a picture with the quote: "if you hate a snitch like this post."

8. On November 20, 2015, your affiant and DEA Special Agent James Blanton interviewed D. Sands. During the interview, D. Sands admitted he had posted the above-mentioned posts to his Facebook account. D. Sands stated he had also sent the above mentioned Facebook Instant Message to David Walker in an attempt to "scare" Walker.

9. On November 23, 2015, your affiant sent a preservation request to Facebook requesting a preservation of the Facebook account of D. Sands for ninety days.

10. This application seeks permission to search and seize records that might be found on the listed property, in whatever form they are found. I submit that there is probable cause to believe those records will be stored by Facebook for at least the following reasons:

- a. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.
- b. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers (for password retrieval), physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.
- c. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which

highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

- d. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.
- e. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. In addition, Facebook users can "check in" to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.
- f. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo

or video. It also provides users the ability to “tag” (*i.e.*, label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook’s purposes, the photos and videos associated with a user’s account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

- g. Facebook users can exchange private messages on Facebook with other users. These messages, which are similar to e-mail messages, are sent to the recipient’s “Inbox” on Facebook, which also stores copies of messages sent by the recipient, as well as other information. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a Chat feature that allows users to send and receive instant messages through Facebook. These chat communications are stored in the chat history for the account. Facebook also has a Video Calling feature, and although Facebook does not record the calls themselves, it does keep records of the date of each call.
- h. If a Facebook user does not want to interact with another user on Facebook, the first user can “block” the second user from seeing his or her account.
- i. Facebook has a “like” feature that allows users to give positive feedback or connect to particular pages. Facebook users can “like” Facebook posts or

- updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become “fans” of particular Facebook pages.
- j. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.
 - k. Each Facebook account has an activity log, which is a list of the user’s posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as “liking” a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Facebook page.
 - l. Facebook Notes is a blogging feature available to Facebook users, and it enables users to write and post notes or personal web logs (“blogs”), or to import their blogs from other services, such as Xanga, LiveJournal, and Blogger.
 - m. The Facebook Gifts feature allows users to send virtual “gifts” to their friends that appear as icons on the recipient’s profile page. Gifts cost money to purchase, and a personalized message can be attached to each gift. Facebook users can also send each other “pokes,” which are free and simply result in a notification to the recipient that he or she has been “poked” by the sender.
 - n. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.
 - o. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications (“apps”) on the Facebook platform.

When a Facebook user accesses or uses one of these apps, an update about that the user's access or use of that application may appear on the user's profile page.

- p. Some Facebook pages are affiliated with groups of users, rather than one individual user. Membership in the group is monitored and regulated by the administrator or head of the group, who can invite new members and reject or accept requests by users to enter. Facebook can identify all users who are currently registered to a particular group and can identify the administrator and/or creator of the group. Facebook uses the term "Group Contact Info" to describe the contact information for the group's creator and/or administrator, as well as a PDF of the current status of the group profile page.
- q. Facebook uses the term "Neoprint" to describe an expanded view of a given user profile. The "Neoprint" for a given user can include the following information from the user's profile: profile contact information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications.
- r. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the

action. For example, if a user views a Facebook profile, that user's IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

- s. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.
- t. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's "Neoprint," IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact

information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the IP addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to “tag” their location in posts and Facebook “friends” to locate each other. This geographic and timeline information may tend to either inculcate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner’s state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner’s motive and intent to commit a crime (*e.g.*, information indicating a plan to commit a crime), or consciousness of guilt (*e.g.*, deleting account information in an effort to conceal evidence from law enforcement).

11. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning

subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

12. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

13. Based on the forgoing, I request that the Court issue the proposed search warrant.

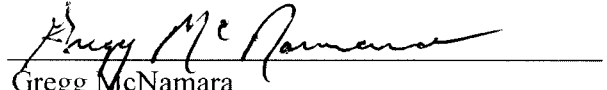
14. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) and (c)(1)(A). Specifically, the Court is a district court of the United States that has jurisdiction over the offense being investigated. 18 U.S.C. § 2711(3)(A)(i). Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

REQUEST FOR SEALING

15. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is not known to all of the targets of

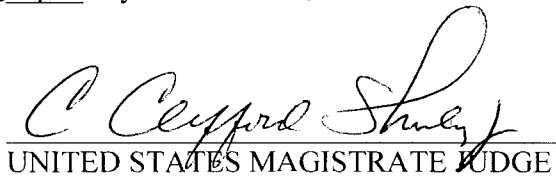
the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gregg McNamara", written over a horizontal line.

Gregg McNamara
Special Agent
Tennessee Bureau of Investigation

Subscribed and sworn to before me this
24th day of November, 2015

A handwritten signature in cursive script, appearing to read "Clifford Shultz", written over a horizontal line.
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A**Property to Be Searched**

This warrant applies to information associated with the Facebook account of user ID <https://www.facebook.com/daniel.sands.908?fref=ts>, that is stored at premises owned, maintained, controlled, or operated by Facebook Inc., a company headquartered in Menlo Park, California.

Particular Electronically Stored Information to be Disclosed**I. Information to be disclosed by Facebook Inc.**

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. ("Facebook"), including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to search for and disclose for the dates of **November 17, 2015 through November 20, 2015**, the following information to the government for each user ID listed in Attachment A:

- (a) All activity logs for the account and all other documents showing the user's posts and other Facebook activities, including all Instant Message activities;
- (b) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them;
- (c) All profile information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists;
- (d) All other records of communications and messages made or received by the user, including all private messages, chat history, video calling history, and pending "Friend" requests;
- (e) All "check ins" and other location information;

- (f) All IP logs, including all records of the IP addresses that logged into the account;
- (g) All records of the account's usage of the "Like" feature, including all Facebook posts and all non-Facebook webpages and content that the user has "liked";
- (h) All information about the Facebook pages that the account is or was a "fan" of;
- (i) All past and present lists of friends created by the account;
- (j) All records of Facebook searches performed by the account;
- (k) All information about the user's access and use of Facebook Marketplace;
- (l) The types of service utilized by the user;
- (m) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all records showing which Facebook users have been blocked by the account;
- (n) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.

The following are not time limited:

- (o) All contact and personal identifying information, including, full name, user identification number, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers;
- (p) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number).

ATTACHMENT B

I. Information to be seized by the government

All information described above in Section I that constitutes fruits, evidence and instrumentalities of violations of 18 U.S.C. §1513(b)(1) involving Daniel Ray Sands since November 17, 2015 through November 20, 2015, including, for each user ID identified on Attachment A, information pertaining to the following matters:

- (a) Evidence indicating how and when the Facebook account Instant Messaging was accessed or used to determine the chronological and geographic context of access, use, and events relating to the crime of retaliation against any person for witness testimony given in an official proceeding, in violation of 18 U.S.C. § 1513.
- (b) Evidence indicating how and when the Facebook account was accessed or used, to determine the chronological and geographic context of account access, use, and events relating to the crime under investigation and to the Facebook account owner;
- (c) Evidence relating to threats, retaliation, on snitching or otherwise indicating the Facebook account owner's state of mind as it relates to the crime under investigation;
- (d) The identity of the person(s) who created or used the user ID, including records that help reveal the location and whereabouts of such person(s);
- (e) The identity of the person(s) who communicated with the user ID about matters relating to the threat of retaliation for testifying in *United States v. Leonard Sands*, No. 3:14-CR-138, including records that help reveal their whereabouts.